Supreme Court of the United States

OCTOBER TERM, 1953

No. .....

CHARLES CHAPLIN,

Petitioner,

against

HON. JOHN W. CLANCY, District Judge of the United States for the Southern District of New York,

Respondent.

Defendant-respondent Kravetz moves:

To include in the record before this court, on petitioner's application for certiorari, the proceedings in the District Court for the Southern District of New York, following denial of relief, by the United States Court of Appeals for the Second Circuit—*i.e.*, the signing and entry of a remand order by District Judge Clancy, and its purported withdrawal, photostatic copies of which are submitted herewith, and the material portions of which are annexed hereto.

JAY LEO ROTHSCHILD,
Counsel for Defendant-
Respondent, Kravetz.

MEYER BOSKEY,
Attorney for Defendant-
Respondent, Kravetz.

Affidavit in Support of Prefixed Motion.

UNITED STATES OF AMERICA
STATE AND COUNTY OF NEW YORK } ss.:

JAY LEO ROTHSCHILD, being duly sworn, deposes and says:

I am counsel for the defendant-respondent, Kravetz.

As appears from the papers submitted both in support of and in opposition to the third-party defendant Chaplin's petition for certiorari, now pending, a stay of "all proceedings"—including, by implication, the entry of any remand of the action—was issued by Mr. Justice Jackson on February 19, 1954, and is now in force.

On February 15, 1954, District Judge Clancy—without knowledge that a similar stay had been granted, on February 11, 1954, by Judge Augustus N. Hand, of the Court of Appeals for the Second Circuit—signed an order of remand, which was entered by the Clerk of the District Court, on the same day. On the next day, *i.e.*, February 16, 1954, Judge Clancy, having become aware of said stay granted by Judge Hand, withdrew his order of remand, by obliterating his signature therefrom and making an entry to that effect in the District Court's docket.

We believe such attempted revocation of the remand order to be a nullity, and so argue, among other things, in our opposition to the petition for certiorari.

Furthermore, we deemed it the duty of counsel to make this court aware of these facts, for whatever significance it may choose to accord them as terminating the jurisdiction of the District Court—which termination, we contend, has occurred. But counsel for petitioner, when asked to cooperate, were of the opinion that events, even of this character, were not properly part of the record in this court, because said events occurred after the denial of relief by the Court of Appeals, and were not reflected in the record before that court. We think otherwise, for two reasons:

(1) The validity of Judge Clancy's aborted remand order depends upon whether Judge Hand's stay was valid, and, accordingly, affects the issue as to whether, notwithstanding said stay, anything remained of federal jurisdiction upon which to predicate action by this court;

(2) In any event, whatever be the correct view, the facts thus eventuated should be presented, so that this court, in whatever disposition it may choose to make, may be acting with knowledge of those facts, and counsel be free from possible criticism for having joined in presenting an academic question.

We think the situation quite the same and, therefore, governed by the same principles as if, pending an application to this court, the case were settled, or other happening occurred which made unnecessary the decision of other questions presented, and that, accordingly, the court should be apprised of the facts.

It is, therefore, respectfully requested that, pursuant to F.R.C.P. 75(h), incorporated in this court's Rule 10(2), relief be granted as requested, making the certified copies of the District Court's record, submitted herewith,—pertinent parts of which are annexed hereto, a part of the record before this court on the petition for certiorari.

JAY LEO ROTHSCHILD,
Counsel for Defendant-
Respondent, Kravetz.

Sworn to before me this
18th day of March, 1954.
ROSALIE HARRISS ROSS,
Notary Public, State of New York.
No. 31-8667900
Qualified in New York County
Cert. filed with N. Y. Co. Register
Commission expires March 30, 1956

Excerpts from Proceedings Touching Remand.

(Sought to be Made Part of Record)

Civ. 66-294

SIRS:

PLEASE TAKE NOTICE that the within is a copy of a proposed order which will be presented for settlement and signature by Hon. JOHN W. CLANCY, at the United States District Courthouse, Foley Square, in the County of New York, on the 26th day of January, 1954, at 10:30 o'clock in the forenoon of that day.

Dated: New York, January 21, 1954.

Yours, etc.,

MEYER BOSKEY,
Attorney for Defendant,
Rina M. Kravetz.

• • •

At a Term for Motions of the United States District Court for the Southern District of New York, held at the United States Court House, Foley Square, Borough of Manhattan, City of New York, on the 27th day of January, 1954.

Present: HON. JOHN W. CLANCY, U. S. D. J.

Civil Action No. 66-294

MARY PICKFORD,

Plaintiff,

against

RINA M. KRAVETZ, as Executrix, etc.,

Defendant.

The defendant, Rina M. Kravetz, having by notice of motion dated November 13, 1953, moved this Court for an

order remanding the above entitled action to the Supreme Court of the State of New York, County of New York, and the defendant, Charles Chaplin, having by notice of motion dated December 2, 1953, moved this Court for an order vacating the order heretofore made herein, dated November 20, 1952, denying his motion to quash the service upon him of the third party summons and cross-complaint, and requesting that the service in this Court on the defendant, Charles Chaplin, be declared to be null and void.

Now, upon reading and filing said notice of motion to remand, dated November 13, 1953, and the affidavits of Meyer Boskey, Esq. and Jay Leo Rothschild, Esq., sworn to November 13 and December 8, 1953, respectively, in support of said motion to remand, and the affidavit of Walter S. Beck, Esq., sworn to December 9, 1953, consenting to said motion to remand, and upon reading and filing said notice of motion to vacate the order of November 20, 1952 and to declare the service upon the defendant, Charles Chaplin, null and void, dated December 2, 1953 and the affidavit of Herbert B. Jacoby, Esq., sworn to December 2, 1953 in support of said motion to declare said service null and void, and said motions having regularly come on to be heard at a Motion Term of this Court on December 10, 1953, and after hearing Jay Leo Rothschild, Esq., of counsel, for the defendant, Rina M. Kravetz, in support of the motion to remand and in opposition to the motion to vacate said order of November 20, 1952 and to declare the service on the defendant, Charles Chaplin, null and void, and after hearing Herbert B. Jacoby, Esq. of counsel for the defendant, Charles Chaplin, in support of the motion to vacate the order of November 20, 1952 and to declare the service on the defendant, Charles Chaplin, null and void, and in opposition to said motion to remand, and the defendant, United Artists Corporation, having consented to said motion to remand, and none of the other parties herein having appeared in opposition thereto,

and due deliberation having been had thereon, and upon filing the opinion of the Court,

Now, on motion of Meyer Boskey, Esq., attorney for the defendant, Rina M. Kravetz, it is

ORDERED, that said motion by the defendant, Rina M. Kravetz, to remand, is granted and that the above entitled action be and the same is hereby remanded to the Supreme Court of the State of New York, County of New York; and it is further

ORDERED, that said motion by the defendant, Charles Chaplin, to vacate said order of November 20, 1952 and to declare the service upon and as against said defendant, Charles Chaplin, as null and void, is denied.

[In Longhand]
Signature Withdrawn

~~JOHN W. CLANCY~~
U. S. D. J.

JOHN W. CLANCY
Feb. 16th

STATE OF NEW YORK
CITY OF NEW YORK
COUNTY OF NEW YORK
} ss.:

JANE FRIEDMAN, being duly sworn, deposes and says:

That she is employed by Meyer Boskey, the attorney for the within named, Rina M. Kravetz, etc. herein.

That on the 21st day of January, 1954, she served the within PROPOSED ORDER WITH NOTICE OF SETTLEMENT UPON [naming various attorneys].

Extract from Docket of District Court

DATE		FILINGS—PROCEEDINGS	ATTORNEYS PLTF.	DEFT.
Nov. 20-52	Filed	Order denying motion to quash service of 3rd party summons upon 3rd party deft. Charles Chaplin, Clancy, J. Mailed notice of entry, 11-21-52		S&F
Dec. 22-52	"	Answer of 3rd party deft. Charles Chaplin to 3rd party complaint		S&F
Sept. 8-53	"	Stip. & Order substituting Bernard B. Smith as atty. in place of Davis Polk Wardwell Sunderland & Kiendl, for pltf.	x	
Oct. 15-53	"	motion papers re: to strike out pleadings. (Ret. 10/22/53) served upon Mary Pickford		
Nov. 12-53	Memo. End. on Motion filed 10-15-53: Marked "off" upon request, Goddard, J.			
Nov. 17-53	Filed	Affdvt. & Notice of Motion to remand—Ret. 11-19-53		MB
Dec. 3-53	"	Notice of Motion that upon granting remand, to make an order vacating order denying motion of 3rd party deft. Charles Chaplin to quash service of 3rd party summons—Ret 12-10-53		S&F
Jan. 12-54	"	Affdvt. of Jay Leo Rothschild		
Jan. 12-54	"	" " Walter S. Beck		

DATE		FILINGS—PROCEEDINGS	ATTORNEYS PLTF.	DEFT.
Jan. 12-54	"	Opinion #20,892 Motion of 3rd party deft. Chaplin to vacate service on him denied; motion to remand granted on consent of United Artists Corp. and on its merits,—Clancy, J.		
Feb. 11-54	"	Certified Copy of U.S.C.A. Order staying proceedings pending application for writ of certiorari to Circuit Justice on or before 2-16-54 (microfilmed 2-17-54)		
Feb. 15-54	"	Order remanding action to Supreme Court, N. Y. County, Clancy, J. Mailed notice of entry 2-16-54		MB
Feb. 16-54		Signature withdrawn, John W. Clancy (on Order filed 2-15-54) (order returned to file)*		
Feb. 20-54		Filed Certified Copy of U. S. Sup. Ct. Order staying all proceedings pending disposition of petition for certiorari to be filed on or before 3-11-54, etc.		
2/11/54*		Do not remand await outcome of certiorari*	See Tray of J. B.*	

* These portions, appear in pencilled longhand.

Office - Supreme Court, U.
FILED
MAR 2 1954
HAROLD B. WILLEY, Cl

IN THE

Supreme Court of the United States

October Term, 1953

No. 630

CHARLES CHAPLIN,
Petitioner,

vs.

HON. JOHN W. CLANCY,
Respondent.

CHARLES CHAPLIN,
Third Party Defendant-Petitioner,

vs.

RINA M. KRAVETZ, as Executrix, etc.,
Defendant-Respondent,

and

MARY PICKFORD,
Plaintiff,

and

THE PICKFORD CORPORATION, UNITED ARTISTS CORPORATION, ARTHUR B. KRIM, ROBERT S. BENJAMIN, SEYMOUR M. PEYSER, MATTHEW FOX, WALTER E. HELLER & CO. INC., PAUL V. McNUTT and FRANK L. McNAMEE,
Third Party Defendants.

REPLY BRIEF IN SUPPORT OF PETITION FOR CERTIORARI AND IN OPPOSITION TO MOTION TO CORRECT DIMINUTION OF THE RECORD

MYLES J. LANE,
Counsel for Petitioner.

APPELLATE PRESS CORP., 114 WORTH STREET, N. Y., COrtlandt 7-7627

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and

MARY PICKFORD,

Plaintiff,

and

THE PICKFORD CORPORATION, UNITED ARTISTS CORPORATION, ARTHUR B KRIM, ROBERT S. BENJAMIN, SEYMOUR M. PEYSER, MATTHEW FOX, WALTER E. HELLER & CO. INC., PAUL V. McNUTT and FRANK L. McNAMEE,

Third Party Defendants.

REPLY BRIEF IN SUPPORT OF PETITION FOR CERTIORARI AND IN OPPOSITION TO MOTION TO CORRECT DIMINUTION OF THE RECORD

Statement

This reply brief is submitted in support of the petition for certiorari herein and in opposition to respondent's motion to correct diminution of the record.*

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* Unless otherwise indicated, references are to pages of the printed record.

POINT I

Certiorari is warranted by the questions presented.

Respondent's brief in opposition proceeds upon the basic assumption that the petition below sought review of part of an order of remand. That assumption is incorrect. The petition below did not request any such review. The Court of Appeals was requested only to consider the proceedings taken prior to remand with regard to the service of process. The Court was requested either to issue mandamus to direct vacatur of these proceedings or, in the alternative, to issue common law certiorari to review on the merits the order denying the original motion to quash the service (10-1, 15-6).*

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* We have stated that the District Court's order upholding the purported service upon a hotel manager was clearly erroneous. While the respondent made no attempt to sustain the propriety of that ruling in the Court of Appeals (76-91), his brief in opposition herein addresses itself momentarily to the merits. Respondent now asserts that petitioner has nowhere established that California was still his permanent residence at the time of the purported service (brief, pp. 2-3). This was not the theory adopted by the trial court (18-22), nor has respondent urged it previously.

There is no factual basis whatsoever for this new theory of respondent, and it is based upon a misstatement of the record. The affidavit of petitioner's attorney on the motion to quash contained the following undisputed statement (29): "The defendant Chaplin is and has been a resident and domiciliary of California continuously from 1914 to the present time—a period of some 38 years. Since approximately 1925 his dwelling house or usual place of abode has been 1085 Summit Drive, Beverly Hills, California. * * *" Furthermore, it is a matter of public record that petitioner, a resident alien, left this country on what was to be a temporary visit, and that it was the unexpected *subsequent* action of the Government which prevented him from returning. See New York Times, September 20, 1952, pp. 1, 16. It is significant that respondent has adopted this new theory and has deserted the reasoning of the trial court.

It should be noted that this action was pending for sixteen months prior to petitioner's visit to New York, 3,000 miles from his home. Suit could effectively have been brought in California, the state of petitioner's residence, at any time during that period.

The circumstance that the District Court had refused to vacate its proceedings at the time of its decision to remand the case did not make that refusal part of the remand. In *Waco* v. *U. S. Fidelity & Guaranty Co.*, 293 U. S. 140, the dismissal as against the third party defendant was held to be reviewable notwithstanding the simultaneity of that decision with the order of remand.* Likewise, in the recent case of *Komlos* v. *Compagnie Nacionale Air France* (2d Cir.), 209 F. 2d 436, an order dismissing a complaint was held to be reviewable notwithstanding simultaneity with an order of remand. Furthermore, insofar as the petition below sought common law certiorari, it was addressed directly and exclusively to proceedings which had taken place before the motion for remand was made.

In short, it is our view that where a Federal District Court has erroneously assumed jurisdiction over additional parties prior to remand, then appropriate disposition must be made of those proceedings before transmission of the case to the State Court. In cases where the Federal proceedings result in an appealable order, such disposition may be effected through the medium of an appeal from that order. *Waco* v. *U. S. Fidelity & Guaranty Co., supra,* 293 U. S. 140. We submit that, in like manner, in the case of clearly erroneous jurisdictional rulings where review will otherwise be cut off, appropriate disposition may be effected through the medium of an extraordinary writ. Cf. *House* v. *Mayo,* 324 U. S. 42, *Ex parte Metropolitan Water Co.,* 220 U. S. 539.

The bulk of respondent's brief addresses itself to the question of whether vacatur is the appropriate disposition. In substance, the respondent's argument is that Federal proceedings in improperly removed cases are not

* In *Gurnee* v. *County of Patrick,* 137 U. S. 141, cited by respondent for the contrary proposition (brief, p. 22), the order sought to be reviewed was the remand itself, although the procedural device used was a demurrer addressed to the jurisdictional point.

absolutely void. In support thereof he cites decisions like *Metropolitan Casualty Co.* v. *Stevens,* 312 U. S. 563, in which, as a result of the peculiar facts, the District Court was no longer in a position to enter an order of vacatur at the time of remand. This argument of the respondent, we submit, misses the mark entirely. The issue is not whether Federal proceedings are absolutely void in the absence of an order of vacatur, but whether the Federal Court should enter such an order at the time of remand if it is in a position to do so.

In any event, whether the Court of Appeals should have directed vacatur of the proceedings below, or whether it should simply have reviewed them on the merits, we do not believe it was proper to order their transfer to the State Court in raw, uncorrected form.

The respondent blandly suggests that the question of the disposition of the Federal proceedings is a matter for the State Courts and that, even absent an order of vacatur, the State Courts will be free to ignore completely the determinations of the Federal Court. However, the danger of remanding uncorrected Federal proceedings is demonstrated by the decision of the New York Court of Appeals in *Tillman* v. *Russo Asiatic Bank,* 264 N. Y. 467. In that case, the State Court evidently did not consider itself free to reconsider the Federal rulings, and confined itself to creating "a notation on the record of the valid action of the Federal Court" (264 N. Y., at p. 468).

As authority for his contention that the State Court may disregard the Federal rulings, respondent cites *Iowa Central RR Co.* v. *Bacon,* 236 U. S. 305 (brief, p. 22). A perusal of the *Iowa* decision reveals that it stands for no such proposition. That case had to do only with the validity of State Court proceedings taken after and notwithstanding a removal, as was permissible under the practice of that era. This Court's decision held only that

the State Court proceedings were valid inasmuch as the Federal proceedings, which had been dismissed for lack of prosecution, had resulted in no adjudication of any kind.

As noted in our petition, the respondent's position is apparently the product of a confusion of the principles governing the respect to be accorded the judicial determinations of the Federal Court and the use to be made of the evidential material manufactured by the parties. *Ayres* v. *Wiswall,* 112 U. S. 187, 190; *Brown* v. *Fletcher* (2d Cir.), 206 F. 461, 465, reversed on other grounds 237 U. S. 583.*

Also cited by respondent in support of his position that no action is required by the Federal Court are a number of cases in which motion was made for remand before any Federal proceedings had been taken. See *e. g., Marchand* v. *Mead Morrison Mfg. Co.* (2d Cir.), 11 F. 2d 368; *Levine* v. *Buick-Olds-Pontiac Sales Co.* (D. Ohio), 12 F. Supp. 521 (brief, pp. 21-22). However, those decisions have no application here, as to the disposition of proceedings whereby an additional party was brought into the case before the impropriety of the removal was discovered.

The respondent's brief suggests that the present record is insufficient for an intelligent disposition of the proceedings with regard to service (pp. 17-18, 20). That suggestion is without merit. The entire record of the proceedings on service was included in the petition to the Court below, and is included as a part of the record before this Court. Likewise, concerning the lack of basis for removal, the essential facts are fully set forth (pp. 5-6, 66-7). We concur with respondent that, while parties residing in various states were joined in the suit, no separate cause of action existed as between diverse parties (brief, pp. 1, 17-18). There is no dispute as to those

* Through an oversight, the reversal of the *Fletcher* case, on an entirely unrelated point, was not noted in our petition.

facts, nor is there any issue in this case as to the impropriety of the removal.*

We submit that the instant application for certiorari presents an important question in the administration of Federal justice concerning which the Court below has acknowledged definite uncertainty. Moreover, it is only at this stage of the case that this Court can resolve the uncertainty, for once the action is remanded to the State Courts, the question of the duty of the Court of Appeals to act will have become moot.

The issues that will be presented to this Court in the event that certiorari is granted can be clearly stated. First, there will be presented the question of whether the Court of Appeals erred in declining to act in the premises. Second, if that issue is resolved in the affirmative, there will be presented the further question of what action is appropriate: vacatur of the District Court's proceed-

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* The respondent's suggestion that there would have been a basis for original as distinguished from removal jurisdiction, is totally without merit. Indeed, contrary to respondent's apparent misconception, original jurisdiction is *narrower* than removal jurisdiction. Original jurisdiction requires that diversity be complete, and if there is on either side a party of like citizenship with a party on the other, original jurisdiction does not exist. Unlike the rule with regard to removal jurisdiction, no exception is made even where separate and independent causes of action exist purely as between diverse parties. Compare 28 U. S. C. §1332 with 28 U. S. C. §1441; see Wechsler, Federal Jurisdiction and the Revision of the Judicial Code, 13 Law & Contemp. Prob. 216, 236; Note, 60 Harv. L. Rev. 424, 431.

The respondent's attempt to ascribe significance to the possibility that Congress has constitutional power to confer jurisdiction in this type of case is likewise specious. The possible existence of such power has no bearing upon situations in which Congress has seen fit to withhold it.

Indeed, so palpably unmeritorious are these contentions, that one may wonder whether they are urged seriously or solely to lend color to respondent's unwarranted suggestions concerning the sufficiency of the record.

ings, or affirmance or reversal of the order sustaining service. It is submitted that the questions of law presented herein are sufficiently important to warrant clarification by this Court, and that, on the other hand, the reasons advanced by respondent for denying review are insubstantial.

POINT II

The reasons advanced by respondent for denying review are insubstantial.

On the date of the Court of Appeals' decision, Judge A. N. Hand of that court issued an order temporarily staying all proceedings until application could be made to a Justice of this Court for a further stay.* A copy of the stay was immediately filed with the Clerk of the District Court. Thereafter, during the pendency of Judge Hand's stay, Judge Clancy signed a purported order of remand. The existence of the stay was immediately called to Judge Clancy's attention by the Clerk of the District Court, and he promptly recalled the purported order of remand before any attempt had been made to execute it. Moving to open the record to include the recalled order, respondent now contends that Judge Clancy lacked power to recall it, and that it was "self-executing" (brief, pp. 26-30).

That contention is without merit. Under Section 1447 of the Judicial Code, remand is accomplished only when a certified copy of the order of remand has been transmitted to the State Court. The Federal Court retains residual power to revoke its order until that is done, for it is only upon such transmission that the State Court is reinvested with jurisdiction to proceed with the case. 28 U. S. C. §1447(c).

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* It should be noted that while Judge Hand's temporary stay was *ex parte*, a further stay was granted by the Circuit Justice after a hearing at which the respondent, having submitted written opposition, argued orally.

Strangely, the respondent seeks to derive comfort from the fact that nowhere in the present Code is there any direction that remand shall be carried into execution immediately, whereas the former statute did contain such a provision. While not entirely clear, his argument is apparently that the existence of the immediate execution provision in the former statute had provided a basis for holdings to the effect that orders of remand are not self-executing, and that omission of that provision from the present statute is indicative of a legislative intention to remove that basis (brief, pp. 27-29).

Examination of the authorities discloses that the significance generally attributed to the immediate execution provision of the former statute was exactly opposite to that which respondent ascribes to it. The word "immediately" had been used as an argument *in support* of the view that remands were self-executing, and not against that view, as respondent suggests. *Bucy* v. *Nevada Construction Co.* (9th Cir.), 125 F. 2d 213; *Leslie* v. *Floyd Gas Co.* (E. D. Ky.), 11 F. Supp. 401; *Ausbrooks* v. *Western Union Telegraph Co.* (S. D. Ala.), 282 Fed. 733. And while the argument had been unsuccessful in the only appellate court to consider the matter [*Bucy* v. *Nevada Construction Co., supra*], it had been accepted in occasional District Courts [*Leslie* v. *Floyd Gas Co., supra; Ausbrooks* v. *Western Union Telegraph Co., supra*].

Thus, if the elimination of the provision has any meaning in this connection, it is as a rejection, and not as an adoption of the view that remands are self-executing. This is confirmed by Moore's treatment of the subject in which, adverting briefly to the *Bucy* decision, he states (Commentary on the 1949 U. S. Judicial Code, p. 286):

> "Despite the strong language of the former statute to the effect that when the district court orders the case remanded 'such remand shall be immediately carried into execution', it was held that this did not instantly deprive the district court of jurisdiction.

> This meant that steps were to be taken promptly to carry the remand into effect, but until these steps were taken the district court had power to vacate its order. This should be true under the amendment of 1949 since it does not command immediate execution of the remand order."

Respondent is incorrect when he argues that Judge Hand's stay was illegal because, he claims, issued in furtherance of an attempt to review an order of remand. As we have seen, there is no effort here to review any order of remand but only proceedings other than the remand itself.

Equally unsound is respondent's further suggestion that Judge Hand's stay was illegal because, in any event, it required *postponement* of the remand. As already noted, the present statute contains no prohibition against such postponement and no direction for immediate execution. Indeed, respondent is apparently aware (respondent's brief, p. 29) that the revisors intentionally refrained from adopting such a provision at the time of the 1949 amendatory act, when they reinserted the "substance" of the former statute, *i. e.*, the prohibition against review, which had been inadvertently omitted at the time of the enactment of the 1948 Code.*

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* Under the former statutes, the only modes of review *expressly* prohibited were appeal and writ of error. 28 U. S. C. (1940) §71. Mandamus and the other extraordinary writs were held to be unavailable both by analogy from that specific prohibition and by inference from the immediate execution requirement. *Ex parte Pennsylvania Co.*, 137 U. S. 451, 453-4. The 1949 amendment makes the prohibition against review by extraordinary writ explicit and deletes the ambiguous "immediate execution" clause. Thus, the report of the Congressional Committees states that the present statute continues "the former law as to the finality of an order of remand to a State court. * * *" 81st Cong., 1st Sess., H. R. Rep. 352, Sen. Rep. 303, 2 U. S. Code & Cong. Serv. 1268.

In short, Judge Clancy's signing of the purported order of remand constituted a violation of a valid stay issued by an appellate judge. Before any execution had been attempted, Judge Clancy was apprised of the stay's existence and revoked his act. It is clear, we submit, that Judge Clancy's revoked act has not destroyed this Court's jurisdiction, and that the petition for certiorari may be entertained.

Finally, apart from the foregoing and assuming, *arguendo*, that remand has taken place, this Court nevertheless has jurisdiction to review the proceedings which were completed prior to that time. In *Waco* v. *U. S. Fidelity & Guaranty Co.*, 293 U. S. 140, this Court, and later the Court of Appeals (76 F. 2d 467), held that appellate jurisdiction over the completed Federal proceedings might be exercised notwithstanding the intervening execution of a remand.

CONCLUSION

The petition for certiorari should be granted and the motion for certiorari to correct diminution of the record should be denied.

Respectfully submitted,

MYLES J. LANE,
Counsel for Petitioner.

HERBERT P. JACOBY,
STUART G. SCHWARTZ,
of Counsel.